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TAGS:ETRD

SUBJECT:COUNTERVAILING DUTY LAW PROVISIONS OF TRADE ACT

01. THE FOLLOWING BACKGROUND INFORMATION AND COMMENTS ARE PROVIDED FOR USE IN RESPONDING TO INQUIRIES ON NEW PROVISIONS OF COUNTERVAILING DUTY LAW. POSTS ARE URGED TO STRESS POSITIVE ASPECTS OF NEW LEGISLATIVE REQUIREMENTS.

2. TRADE ACT OF 1974 INCORPORATES FIRST SIGNIFICANT CHANGES IN COUNTERVAILING DUTY LAW SINCE ITS PASSAGE IN 1897. CHANGES REFLECT DESIRE BY CONGRESS TO MORE EXPEDITIOUSLY RESOLVE CASES UNDER THE LAW WHILE AT THE SAME TIME RECOGNIZING POTENTIALLY ADVERSE EFFECT THAT COUNTERVAILING DUTY ACTIONS COULD HAVE ON MULTILATERAL TRADE NEGOTIATIONS IN LIMITED SITUATIONS.

3. REVISED LAW REQUIRES TREASURY TO REACH FINAL DECISION WITHIN TWELVE MONTHS AFTER A PETITION HAS BEEN RECEIVED; A PRELIMINARY DETERMINATION MUST BE MADE WITHIN SIX MONTHS. NEW PROCEDURES INCLUDE PUBLICATION OF PETITIONS WHEN RECEIVED IN PROPER FORM SO THAT ALL INTERESTED PARTIES (DOMESTIC PRODUCERS, IMPORTERS, CONSUMERS, FOREIGN GOVERNMENTS, EXPORTERS OF PRODUCTS AFFECTED) WILL RECEIVE INFORMATION ON PETITIONS AS THEY ARE FILED. TREASURY IS ALSO DEVELOPING GUIDELINES GOVERNING FORM OF AND SUBSTANCE REQUIRED IN A PROPER PETITION TO INSURE THAT ONLY PETITIONS WHICH PROVIDE A PRIMA FACIE CASE WILL BE INVESTIGATED.

4. RECENT PUBLICATION OF 30 PENDING COUNTERVAILING PETITIONS IS ONE TIME EFFORT TO CLEAR PENDING CASES IN LIGHT OF NEW LEGISLATION. IN LIGHT OF CONFERENCE REPORT, TREASURY REQUIRED TO REACH FINAL DECISION ON ALL PETITIONS PENDING PRIOR TO ENACTMENT OF BILL WITHIN LIMITED OFFICIAL USE

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TWELVE MONTHS FROM JANUARY 4, 1975. IT IS PROCEDURAL IN NATURE AND IN NO WAY INDICATES ANY INTENTION TO USE COUNTERVAILING DUTY LAW TO ACHIEVE TRADE POLICY OBJECTIVES OR TO OPEN NEW CASES WITHOUT PRIOR RECEIPT OF PROPER PETITIONS.

5. A SECOND IMPORTANT CHANGE IN THE LAW EXTEND THE STATUTE TO COVER IMPORTS OF DUTY-FREE MERCHANDISE. HOW-

EVER, IN THESE CASES IT MUST BE ESTABLISHED THAT A U.S. INDUSTRY IS OR IS LIKELY TO BE INJURED OR IS PREVENTED FROM BEING ESTABLISHED BY REASON OF THE COUNTERVAILABLE IMPORTS. UNDER THIS PROVISION, PRODUCTS FROM DEVELOPING COUNTRIES WHICH QUALIFY FOR GSP TREATMENT WOULD BE TREATED AS DUTY-FREE MERCHANDISE FOR THE PURPOSES OF A COUNTERVAILING DUTY INVESTIGATION AND DUTIES WOULD NOT BE IMPOSED UNLESS INJURY WAS ESTABLISHED. INJURY DETERMINATION WOULD NOT BE REQUIRED, HOWEVER, WHEN THE INTERNATIONAL OBLIGATIONS OF THE U.S. DO NOT SO REQUIRE. THE LEGAL EFFECT OF THIS EXCEPTION IS TO REMOVE THE INJURY REQUIREMENT WHEN THE DUTY-FREE EXPORTS ARE FROM A NON-GATT MEMBER WITH WHICH THE U.S. HAS NO BILATERAL FCN TREATY.

6. A MAJOR CHANGE IN THE LAW IS THE DISCRETIONARY PROVISION WHICH ALLOWS THE SECRETARY OF THE TREASURY TO

REFRAIN FROM ASSESSING COUNTERVAILING DUTIES (AFTER A FINAL DETERMINATION THAT BOUNTIES OR GRANTS DO EXIST) FOR A PERIOD NOT EXCEEDING FOUR YEARS AFTER PASSAGE OF THE TRADE ACT IN THOSE SPECIAL CASES WHERE HE DETERMINES THAT: (A) ADEQUATE STEPS HAVE BEEN TAKEN TO REDUCE SUBSTANTIALLY OR ELIMINATE THE ADVERSE EFFECT OF A BOUNTY OR GRANT WHICH HE HAS DETERMINED IS BEING PAID OR BESTOWED; (B) THERE IS A REASONABLE PROSPECT THAT SUCCESSFUL TRADE AGREEMENTS WILL BE ENTERED INTO PROVIDING FOR THE REDUCTION OR ELIMINATION OF BARRIERS TO OR OTHER DISTORTIONS OF INTERNATIONAL TRADE; AND (C) THE

IMPOSITION OF DUTIES WOULD BE LIKELY TO SERIOUSLY JEOPARDIZE THE SATISFACTORY COMPLETION OF SUCH NEGOTIATIONS. ANY DETERMINATION BY THE SECRETARY UNDER THIS LIMITED OFFICIAL USE

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PROVISION IS SUBJECT TO VETO BY EITHER HOUSE OF CONGRESS.

7. AN OBJECTIVE OF THE ABOVE PROVISION IS TO PROVIDE THE CLIMATE FOR AN INTERNATIONAL AGREEMENT IN THE MTN ON SUBSIDY PRACTICES. IF SUCH AN AGREEMENT WERE TO REQUIRE CHANGES IN U.S. LAW, IMPLEMENTING LEGISLATION WOULD BE SUBMITTED TO CONGRESS FOR ITS CONSIDERATION. ADDRESSEES SHOULD BE CAUTIOUS NOT TO GIVE HOST GOVERNMENTS THE IMPRESSION THAT THIS PROVISION WILL BE UTILIZED TO RESOLVE ANY AND ALL COUNTERVAILING CASES. EXERCISE OF DISCRETION SHOULD BE CONSIDERED AS THE EXCEPTION RATHER THAN THE RULE WITH THE PREFERRED SOLUTION BEING THE REMOVAL BY THE EXPORTING COUNTRY OF THE BOUNTY OR GRANT.

8. TRADE ACT ALSO ALLOWS DOMESTIC MANUFACTURERS TO

REQUEST JUDICIAL REVIEW OF NEGATIVE DECISIONS. KISSINGER

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